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PTO/SB/21 (09-04)

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Application Number	10/603,534
Filing Date	6-25-2003
First Named Inventor	Alexandre Bronstein
Art Unit	2686
Examiner Name	Khan S.
Attorney Docket Number	BRONSTEIN.001

### ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address  <input type="checkbox"/> Terminal Disclaimer  <input type="checkbox"/> Request for Refund  <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC  <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences  <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)  <input type="checkbox"/> Proprietary Information  <input type="checkbox"/> Status Letter  <input type="checkbox"/> Other Enclosure(s) (please identify below):
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### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Paul H. Horstmann		
Signature			
Printed name	Paul H. Horstmann		
Date	10-17-05	Reg. No.	36,167

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PTO/SB/17 (12-04v2)

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# FEE TRANSMITTAL

## For FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 500.00

**Complete if Known**

Application Number	10/603,534
Filing Date	6-25-2003
First Named Inventor	Alexandre Bronstein
Examiner Name	Khan S.
Art Unit	2686
Attorney Docket No.	BRONSTEIN.001

**METHOD OF PAYMENT** (check all that apply)☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_☐ Deposit Account Deposit Account Number: \_\_\_\_\_ Deposit Account Name: \_\_\_\_\_

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☐ Credit any overpayments**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES****Fee Description**

Each claim over 20 (including Reissues)

Each independent claim over 3 (including Reissues)

Multiple dependent claims

Fee (\$)	Small Entity Fee (\$)
50	25
200	100
360	180

**Total Claims** **Extra Claims** **Fee (\$)** **Fee Paid (\$)**

- 20 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of total claims paid for, if greater than 20.

**Indep. Claims** **Extra Claims** **Fee (\$)** **Fee Paid (\$)**

- 3 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of independent claims paid for, if greater than 3.

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

<b>Total Sheets</b>	<b>Extra Sheets</b>	<b>Number of each additional 50 or fraction thereof</b>	<b>Fee (\$)</b>	<b>Fee Paid (\$)</b>
_____ - 100 = _____	_____ / 50 = _____	_____ (round up to a whole number)	x _____ = _____	

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Fee under 37CFR 41.20(b)(2) - Filing a brief in support of an appeal \$500.00

**SUBMITTED BY**

Signature	<i>Paul H. Horstmann</i>	Registration No. (Attorney/Agent)	36,167	Telephone	310-376-0218
Name (Print/Type)	Paul H. Horstmann	Date	10-17-05		

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: )

Alexander Bronstein )

Examiner: Khan S. )

Application No: 10/603,534 )

Art Unit: 2686 )

Filed: 6-25-2003 )

For: DEFENDING AGAINST UNWANTED )  
COMMUNICATIONS BY STRIKING BACK )  
AGAINST THE BENEFICIARIES OF THE )  
UNWANTED COMMUNICATIONS )

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Paul H. Horstmann

Name of Person Mailing Correspondence

Paul H. Horstmann

Signature

10-17-05

Date

**Appellant's Brief (Pursuant to 37 C.F.R. §41.37)**

Dear Sir:

Applicant/Appellant submits this Appeal Brief in connection with the above-referenced patent application which is on appeal to the Board of Patent Appeals and Interferences.

10/24/2005 CCHAU1 00000027 10603534

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## TABLE OF CONTENTS

<b>REAL PARTY IN INTEREST .....</b>	<b>4</b>
<b>RELATED APPEALS AND INTERFERENCES .....</b>	<b>4</b>
<b>STATUS OF THE CLAIMS.....</b>	<b>4</b>
<b>STATUS OF AMENDMENTS .....</b>	<b>4</b>
<b>SUMMARY OF CLAIMED SUBJECT MATTER.....</b>	<b>5</b>
<b>GROUND OF REJECTION TO BE REVIEWED ON APPEAL .....</b>	<b>6</b>
I: REJECTION OF CLAIMS 1-6, 9, AND 21-24 AS BEING ANTICIPATED BY ELLIOTT. ....	6
II: REJECTION OF CLAIMS 7-8 AND 25 AS BEING OBVIOUS IN VIEW OF ELLIOTT AND KIKUTA. ....	6
III: REJECTION OF CLAIMS 26-29 AND 31 AS BEING ANTICIPATED BY ELLIOTT.....	6
IV: REJECTION OF CLAIM 30 AS BEING OBVIOUS IN VIEW OF ELLIOTT AND KIKUTA.....	6
<b>ARGUMENT.....</b>	<b>7</b>
I: CLAIMS 1-6, 9, AND 21-24 ARE NOT ANTICIPATED BY ELLIOTT BECAUSE ELLIOTT DOES NOT DISCLOSE THE LIMITATIONS OF INDEPENDENT CLAIMS 1 AND 21. ....	7
<i>A. Elliott does not disclose identifying a communication channel to a beneficiary of an unwanted communication as claimed in claims 1 and 21.....</i>	<i>7</i>
<i>B. Elliott does not disclose sending a communication via an identified communication channel to a beneficiary of an unwanted communication as claimed in claims 1 and 21.....</i>	<i>8</i>
II: CLAIMS 7-8 AND 25 ARE NOT OBVIOUS IN VIEW OF ELLIOTT AND KIKUTA BECAUSE ELLIOTT AND KIKUTA DO NOT DISCLOSE OR SUGGEST THE LIMITATIONS OF INDEPENDENT CLAIMS 1 AND 21. ....	9
III: CLAIMS 26-29 AND 31 ARE NOT ANTICIPATED BY ELLIOTT BECAUSE ELLIOTT DOES NOT DISCLOSE THE LIMITATIONS OF INDEPENDENT CLAIM 26.....	10
<i>A. Elliott does not disclose a recipient system of an unwanted communication that obtains an identification of a beneficiary of the unwanted communication from a defense coordinator as claimed in claim 26. ....</i>	<i>10</i>
<i>B. Elliott does not disclose a recipient system of an unwanted communication that strikes back against a beneficiary of the unwanted communication by sending a communication via an identified communication channel to the beneficiary as claimed in claim 26.....</i>	<i>11</i>
IV: CLAIM 30 IS NOT OBVIOUS IN VIEW OF ELLIOTT AND KIKUTA BECAUSE ELLIOTT AND KIKUTA DO NOT DISCLOSE OR SUGGEST THE LIMITATIONS OF INDEPENDENT CLAIM 26... ..	12
<b>CONCLUSION .....</b>	<b>13</b>
<b>CLAIMS APPENDIX.....</b>	<b>14</b>
<b>EVIDENCE APPENDIX.....</b>	<b>17</b>

<b>RELATED PROCEEDINGS APPENDIX .....</b>	<b>18</b>
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### **REAL PARTY IN INTEREST**

The real party in interest in this application is ASTAV, inc.

### **RELATED APPEALS AND INTERFERENCES**

Appellant is unaware of any other related appeals or interferences that may directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

### **STATUS OF THE CLAIMS**

Claims 1-6, 9, 21-24, 26-29, and 31 stand rejected under 35 U.S.C. §102(e) in view of U.S. Patent No: 6,650,742 of *Elliott et al.* ("*Elliott*").

Claims 7-8, 25, and 30 stand rejected under 35 U.S.C. §103(a) in view of *Elliott* and U.S. Patent Application Publication No: 2002/0004800 of *Kikuta et al.* ("*Kikuta*").

Appellant appeals the rejection of all of the pending claims 1-9 and 21-31. Claims 1-9 and 21-31 as currently pending are set forth in the attached Appendix.

### **STATUS OF AMENDMENTS**

Appellant is unaware of any amendments filed after the Final Office Action mailed May 16, 2005 which finally rejected claims 1-9 and 21-31.

### **SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claims 1 and 21 are directed to defending against an unwanted communication by striking back against a beneficiary of the unwanted communication<sup>1</sup>. Striking back against a beneficiary of an unwanted communication deters further unwanted communications by consuming the capacity of a communication channel belonging to the beneficiary<sup>2</sup>. Defending against an unwanted communication according to independent claims 1 and 21 includes identifying a communication channel to a beneficiary of the unwanted communication<sup>3</sup> and then sending a communication via that identified communication channel to the beneficiary<sup>4</sup>.

Independent claim 26 is directed to a distributed strike back system that enables a receiver of an unwanted communication to participate in a distributed strike back against a beneficiary of the unwanted communication<sup>5</sup>. A distributed strike back system according to independent claim 26 includes a recipient system of an unwanted communication that obtains an identification of a beneficiary of the unwanted communication from a defense coordinator<sup>6</sup>. The recipient system itself strikes back against the beneficiary by sending a communication via the identified communication channel to the beneficiary<sup>7</sup>.

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<sup>1</sup> See appellant's specification, page 2, lines 3-5.

<sup>2</sup> See appellant's specification, page 2, lines 10-12 and page 6, lines 2-19.

<sup>3</sup> See appellant's specification, page 2, lines 6-8, and page 4, line 11 through page 5, line 30, element 10 of Figure 1, Figure 2, element 92 of Figure 4.

<sup>4</sup> See appellant's specification, page 2, lines 8-9, and page 5, lines 32-33, element 12 of Figure 1, element 82 of Figure 3, element 96 of Figure 4.

<sup>5</sup> See appellant's specification, page 2, lines 12-20.

<sup>6</sup> See appellant's specification, elements 30-34 and 100 and 70-72 of Figure 2.

<sup>7</sup> See appellant's specification, elements 30-34 of Figure 2 and page 8, lines 15-24, and page 11, lines 21-27.

**GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

**I: Rejection of claims 1-6, 9, and 21-24 as being anticipated by *Elliott*.**

**II: Rejection of claims 7-8 and 25 as being obvious in view of *Elliott* and *Kikuta*.**

**III: Rejection of claims 26-29 and 31 as being anticipated by *Elliott*.**

**IV: Rejection of claim 30 as being obvious in view of *Elliott* and *Kikuta*.**



## ARGUMENT

### **I: Claims 1-6, 9, and 21-24 are not anticipated by *Elliott* because *Elliott* does not disclose the limitations of independent claims 1 and 21.**

Appellant respectfully submits that claims 1 and 21, and claims 2-6, 9, and 22-24 which depend from claims 1 and 21, are not anticipated by *Elliott* because *Elliott* does not disclose the limitations in claims 1 and 21 for striking back against a beneficiary of an unwanted communication. *Elliott* does not disclose identifying a communication channel to a beneficiary of an unwanted communication and *Elliott* does not disclose sending a communication via that identified communication channel as claimed in claims 1 and 21.

### **A. *Elliott* does not disclose identifying a communication channel to a beneficiary of an unwanted communication as claimed in claims 1 and 21.**

Appellant submits that *Elliott* does not disclose identifying a communication channel to a beneficiary<sup>8</sup> of an unwanted communication as claimed in claims 1 and 21. Instead, *Elliott* teaches identifying a communication channel, i.e. a caller ID, of a caller, e.g. a telemarketer, who originates an annoying voice call (*Elliott*, Abstract and col. 4, line 62). It is submitted that identifying a caller ID of a telemarketer as disclosed in *Elliott* does not anticipate identifying a communication channel to a beneficiary of an unwanted communication as claimed in claims 1 and 21 because a telemarketer as disclosed in *Elliott* may originate a voice call on behalf of another party who is the true beneficiary<sup>9</sup> of the voice call. For example, a telemarketer may originate a voice

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<sup>8</sup> Appellant's specification defines a beneficiary of an unwanted communication as "an individual and/or organization that seeks an economic or other benefit to flow from the unwanted communication" and states that the beneficiary may not be the sender of the unwanted communication." (See Appellant's specification on page 4, lines 13-18).

<sup>9</sup> One of the advantages of appellant's invention as claimed in claims 1, 21, and 26 is that it strikes back against a beneficiary who does not actually send an unwanted communication, e.g. a pornographer who hires an out of jurisdiction spammer to send spam emails that peddle the

call on behalf of a seller of a product or service who is the true beneficiary of the voice call or on behalf of a political candidate who is the true beneficiary of the voice call.

**B. *Elliott* does not disclose sending a communication via an identified communication channel to a beneficiary of an unwanted communication as claimed in claims 1 and 21.**

Appellant submits that *Elliott* does not disclose sending a communication via an identified communication channel to a beneficiary of unwanted communication as claimed in claims 1 and 21. *Elliott* teaches identifying a caller ID associated with a caller<sup>10</sup> (*Elliott*, Abstract and col. 4, line 62) but does not teach sending a communication, i.e. placing a call, using that identified caller ID. Instead, *Elliott* teaches notifying a local telephone company which bills the caller associated with the identified caller ID (*Elliott*, col. 5, lines 33-42). It is submitted that sending a bill to a caller does not anticipate placing a call to a caller using an identified caller ID.

The examiner has stated that

it is inherent that by charging the caller, communication is being sent. (page 2, Office Action, May 16, 2005).

Appellant respectfully submits that even if it is inherent that charging a caller involves a communication, it is not inherent that charging a caller involves sending a communication via an identified communication channel as claimed in claims 1 and 21. *Elliott* does not teach that charging a caller involves sending a communication via a communication channel corresponding to a caller ID of the caller<sup>11</sup>.

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content offered by the pornographer. (See Appellant's specification on page 8, line 32 through page 9, line 14 and page 1, lines 29-32).

<sup>10</sup> Appellant has shown that a caller as disclosed by *Elliott* is not necessarily a beneficiary of an unwanted communication as claimed in claims 1 and 21.

<sup>11</sup> It is submitted that the state of the art in billing a caller involves sending a bill via the U.S. Postal Service.

**II: Claims 7-8 and 25 are not obvious in view of *Elliott* and *Kikuta* because *Elliott* and *Kikuta* do not disclose or suggest the limitations of independent claims 1 and 21.**

Appellant respectfully submits that claims 7-8 and 25, which depend from claims 1 and 21, are not obvious in view of *Elliott* and *Kikuta* because *Elliott* and *Kikuta* do not disclose or suggest identifying a communication channel to a beneficiary of an unwanted communication and sending a communication via that identified communication channel as claimed in claims 1 and 21. Appellant has shown that *Elliott* does not disclose the limitations of claims 1 and 21. *Kikuta* discloses an electronic notary system (*Kikuta*, paragraph 0014) rather than identifying a communication channel to a beneficiary of an unwanted communication and sending a communication via that identified communication channel as claimed in claims 1 and 21.

**III: Claims 26-29 and 31 are not anticipated by *Elliott* because *Elliott* does not disclose the limitations of independent claim 26.**

Appellant respectfully submits that claim 26, and claims 27-29 and 31 which depend from claim 26, are not anticipated by *Elliott* because *Elliott* does not disclose the limitations in claim 26 of a distributed strike back system that enables a receiver of an unwanted communication to participate in a distributed strike back against a beneficiary of the unwanted communication. *Elliott* does not disclose a recipient system of an unwanted communication that obtains an identification of a beneficiary of the unwanted communication from a defense coordinator as claimed in claim 26. *Elliott* does not disclose a recipient system of an unwanted communication that strikes back against a beneficiary of the unwanted communication by sending a communication via the identified communication channel to the beneficiary as claimed in claim 26.

**A. *Elliott* does not disclose a recipient system of an unwanted communication that obtains an identification of a beneficiary of the unwanted communication from a defense coordinator as claimed in claim 26.**

Appellant submits that *Elliott* does not disclose a recipient system of an unwanted communication that obtains an identification of a beneficiary<sup>12</sup> of the unwanted communication from a defense coordinator as claimed in claim 26. Instead, *Elliott* discloses a local telephone company that obtains an identification of a caller that originates an unwanted communication. (*Elliott*, col. 5, lines 33-40). The local telephone company is not the recipient of the unwanted communication as claimed in claim 26. For example, *Elliott* discloses a called party device 120 that receives a voice call (*Elliott*, col. 4, lines 29-30) and a central office (CO) 140 that generates a packet of information including a caller ID

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<sup>12</sup> Appellant's argument here focuses on the fact that *Elliott* does not disclose a recipient system that obtains an identification of a communication channel from a defense coordinator as claimed

associated with the voice call (*Elliott*, col. 4, lines 48-51 and 58-64). But rather send the identified caller ID to the called party device 120, *Elliott* teaches that the central office 140 sends the caller ID to a service control point (SCP) 160 that notifies a local telephone company (*Elliott*, col. 4, lines 51-52 and col. 5, lines 33-40).

**B. *Elliott* does not disclose a recipient system of an unwanted communication that strikes back against a beneficiary of the unwanted communication by sending a communication via an identified communication channel to the beneficiary as claimed in claim 26.**

Appellant submits that *Elliott* does not disclose a recipient system of an unwanted communication that strikes back against a beneficiary of the unwanted communication by sending a communication via an identified communication channel to the beneficiary as claimed in claim 26. This follows from that fact that *Elliott* does not disclose a recipient system that obtains an identification of a communication channel as claimed in claim 26. Instead, *Elliott* discloses a local telephone company that obtains a caller ID of a caller and that bills<sup>13</sup> the caller (*Elliott*, col. 4, lines 51-52 and col. 5, lines 33-42).

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in claim 26. Appellant has already shown that *Elliott* does not disclose identifying a communication channel to a beneficiary as claimed in claim 26.

<sup>13</sup> Appellant has shown that sending a bill to a caller does not anticipate sending a communication via an identified communication channel to a beneficiary of an unwanted communication as claimed in claim 26.

**IV: Claim 30 is not obvious in view of *Elliott* and *Kikuta* because *Elliott* and *Kikuta* do not disclose or suggest the limitations of independent claim 26.**

Appellant respectfully submits that claim 30 which depends from claim 26 is not obvious in view of *Elliott* and *Kikuta* because *Elliott* and *Kikuta* do not disclose or suggest a recipient system of an unwanted communication that obtains an identification of a beneficiary of the unwanted communication from a defense coordinator and that sends a communication via the identified communication channel as claimed in claim 26. Appellant has shown that *Elliott* does not disclose the limitations of claim 26. *Kikuta* discloses an electronic notary system (*Kikuta*, paragraph 0014) rather than a recipient system of an unwanted communication that obtains an identification of a beneficiary of the unwanted communication from a defense coordinator and that sends a communication via an identified communication channel as claimed in claim 26.

### CONCLUSION

Appellant respectfully submits that the stated rejections cannot be maintained in view of the arguments set forth above. Appellant respectfully submits that all of the claims 1-9 and 21-31 are patentable under 35 U.S.C. §§102,103 over the references cited by the Examiner and requests that the Board of Patent Appeals and Interferences direct allowance of the rejected claims.

Respectfully submitted,

By

Date: 10-17-05

Paul H. Horstmann  
Paul H. Horstmann  
Reg. No. 36,167

## CLAIMS APPENDIX

1. A method for defense against an unwanted communication, comprising:  
identifying a communication channel to a beneficiary of the unwanted communication;  
striking back against the beneficiary by sending a communication via the communication channel to the beneficiary.
2. The method of claim 1, wherein sending a communication via the communication channel to the beneficiary comprises sending a communication via the communication channel that includes a request that the beneficiary cease further unwanted communications to a recipient of the unwanted communication.
3. The method of claim 1, wherein sending a communication via the communication channel to the beneficiary comprises repeatedly sending the communication in accordance with a set of strike back parameters.
4. The method of claim 3, further comprising adjusting a cost imposed on the beneficiary with the communication by adjusting the strike back parameters.
5. The method of claim 1, wherein identifying comprises identifying a money input channel used by the beneficiary to obtain a benefit.
6. The method of claim 1, wherein identifying comprises calling a phone number contained in the unwanted communication.
7. The method of claim 1, wherein identifying comprises accessing a web site specified in the unwanted communication.



8. The method of claim 7, wherein identifying comprises exploring a web site specified in the unwanted communication to find a web page that is financially important to the beneficiary.

9. The method of claim 1, wherein identifying comprises performing a pattern match on a text of the unwanted communication.

21. A defense coordinator that obtains an identify request from a recipient of an unwanted communication and that in response identifies a communication channel to a beneficiary of the unwanted communication and that performs a strike back against the beneficiary by sending a communication via the communication channel to the beneficiary.

22. The defense coordinator of claim 21, wherein the communication includes a request that the beneficiary cease further unwanted communications to the recipient.

23. The defense coordinator of claim 21, wherein the communication channel is a money input channel used by the beneficiary to obtain a benefit.

24. The defense coordinator of claim 21, wherein the defense coordinator maintains a set of information pertaining to the beneficiary and determines a set of strike back parameters in response to the information and repeatedly performs the strike back in accordance with the strike back parameters.

25. The defense coordinator of claim 24, wherein the defense coordinator generates a web page that enables the beneficiary to stop the strike back.

26. A distributed strike back system, comprising:

recipient system of an unwanted communication;

defense coordinator that obtains an identify request from the recipient system and that in response determines a set of strike back parameters that identify a communication channel to a beneficiary of the unwanted communication and that sends the strike back parameters to the recipient system such that the recipient system performs a strike back against the beneficiary by sending a communication via the communication channel to the beneficiary.

27. The distributed strike back system of claim 26, wherein the communication includes a request that the beneficiary cease further unwanted communications to the recipient system.

28. The distributed strike back system of claim 26, wherein the communication channel is a money input channel used by the beneficiary to obtain a benefit.

29. The distributed strike back system of claim 26, wherein the defense coordinator maintains a set of information pertaining to the beneficiary and determines the strike back parameters in response to the information such that the strike back parameters specify an intensity of the strike back against the beneficiary.

30. The distributed strike back system of claim 26, wherein the defense coordinator generates a web page that enables the beneficiary to stop the strike back.

31. The distributed strike back system of claim 26, wherein defense coordinator identifies the communication channel by performing a pattern match on a text of the unwanted communication.

## **EVIDENCE APPENDIX**

None.

**RELATED PROCEEDINGS APPENDIX**

None.